

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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|--------------------|---|---------------------------|
| LARRY S. MCCAMMON, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| vs. | : | CIVIL ACTION 05-0718-BH-M |
| | : | |
| JAMES JOHNSON, | : | |
| | : | |
| Defendant. | : | |

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation (Doc. 10) that Plaintiff's Complaint be dismissed for failure to comply with the Court's Order and prosecute this action. Plaintiff has, in turn, filed an Objection (Doc. 13) to the Magistrate's Report.

On January 10, 2006, after review of Plaintiff's Motion to Proceed Without Prepayment of Fees, the Court ordered (Doc. 5) Plaintiff to pay a \$5.76 partial filing fee within twenty days. Plaintiff was warned that his failure to comply with the Order within the prescribed time would result in the dismissal of his action. On the date the Magistrate's Report and Recommendation was entered, March 21, 2006, the Court was unaware that Plaintiff's filing fee had been received. Therefore, the Magistrate properly suggested that Plaintiff's Complaint be dismissed for failure to comply with the Court's Order. Plaintiff, however, objects to the Report and Recommendation, contending that he paid, via his brother, the requisite filing fee on or about January 14, 2006.

Upon further investigation, the Court has found that Plaintiff did indeed submit his filing fee in a timely manner in January 2006. (Doc. 15). Though notice of such payment was inadvertently left out of the record, the omission has now been rectified. Therefore, the Court cannot find that Plaintiff disobeyed the Court's Order (Doc. 5) of January 10, 2006 and the Magistrate Judge's Report and Recommendation (Doc. 10) is **due to be and hereby DENIED.**

So ORDERED, this 6th day of April, 2006.

s/ W. B. Hand
SENIOR DISTRICT JUDGE